

**IDEOLOGY AND REPRESSION IN ROMANIA IN THE DECADE
BEFORE THE ADOPTION OF THE PENAL CODE OF 1969.
CASE STUDY: THE ECONOMIC CRIMINALITY AND THE
APPLICATION OF CAPITAL PUNISHMENT**

STANCU Radu¹

University of Bucharest

Abstract

In terms of the death penalty, the first half of the communist period was very dynamic in Romania. Its start was dominated by the issue of dealing with war criminals, which often took a retributive form, a disguised way of punishing the fascists, former political rivals of the communists. In 1949, the legal provisions concerning capital punishment were extended to several economic and political crimes, intended to frighten a large part of the population. The zenith of this policy were the years 1958-1959, when the highest rates of executions of the whole period of 1944-1990 were registered. The leadership change usually determined a policy change regarding the death penalty, accompanied by a revision of the Penal Code. Gheorghe Gheorghiu-Dej, the Stalinist ruler of Romania died in 1965, when Nicolae Ceausescu became the new Secretary General of the Romanian Communist Party. This revision of the legal frame also took place in Romania, where a new Penal Code was adopted in 1969, increasing the accuracy of the legal provisions and opening, in foucauldian terms, a more refined era in the history of capital punishment.

Keywords *capital punishment, Romania, communism, death penalty, executions.*

1. Introduction

I strongly believe that there are lessons to be learnt from the communist experience of capital punishment. Following Michel Foucault's warning (Foucault, 2000, 459-461), that the abolition of the death penalty should be related to a serious debate, given the popular support for death

¹ *University of Bucharest, National Archives of Romania*

penalty, it is extremely important that its history is known both by specialists and the larger public. In addition to this, some of the states still applying capital punishment are communist countries that we can better understand through the peculiarities of the death penalty in past communist regimes.

The history of capital punishment in communist Romania is largely unknown and is full of ambiguities. It is difficult to estimate how many people were executed and it is virtually impossible to do the same for those sentenced but not executed. Ignorance and mystification characterizes the public perception and mistakes abound in the few academic works (Poenaru, 1974), making what we know about it today even more uncertain.

Usually one pledges in favor or against the death penalty based on a different moral or utilitarian perspective. It is true that they intercalate sometimes: one can be a retentionist even if the death penalty's efficiency is still unproven while another can be an abolitionist even if it could be proven effective. (Frankowski, 1996, pp. 215-243) It is beyond the scope of this article to get into details or to pledge for one position or another. Nonetheless, I consider it a matter of academic honesty in studying capital punishment to state from the very beginning my abolitionist stance. I am an abolitionist because I know of no statistical data that proves a relationship between the death penalty and crime rates, capital punishment tends to be arbitrary applied on a race, ethnicity, class etc., criteria, and judicial errors can occur. (Evans, 1996, 907-908.) Furthermore, as this study will show, political circumstances often influence the regulation and use of capital punishment.

This article is not a Manichaeian perspective that relates the death penalty with communism and abolition with its liberal enemy. This dichotomy is a simplistic and overrated way of looking at the history of capital punishment, as it has been proven by explicit developments such as the abolition of the death penalty in the GDR in 1987 and its extensive application in the US until the present day. (Garland, McGowen & Meranze, 2011) The death penalty is immune to such distinctions. (Boulanger, Sarat, 2005, p. 31) Hence, its distinctiveness resides in characteristics that lie deeper in the history of capital punishment. Although for Western Europe this history is more or less known (Hood, 2002), this is not the case for the USSR and former East European communist countries, where capital punishment as a historical reality is barely known.

The history of capital punishment in Romania before the Second World War is not spectacular. Used intermittently in the first half of the

nineteenth century, it followed an unusual path compared to other countries in this period. It was abolished in 1864 in the newly established Romanian state, with the exception of a few military crimes provided by the Military Code. Before the Second World War, several works were published on the topic. One of them condemned the practice of “shooting the detainees and fugitive prisoners by prison guards”. (Filiti, 1882) Another book backed up abolitionism making a short history of capital punishment in the 19th century Romania, while its author was a survivor of an attempted political assassination. (Angelescu, 1927) A few years before the prodigious jurist Vespasian V. Pella backed abolitionism in the context of the adoption of a new Constitution in 1923, important voices like the one of professor Ion Tarnovicesanu, the founder of Romanian criminology, supported capital punishment. (Pella, 1923)

All these contributions, most of them from legal scholars, show that the retention or abolition of the death penalty was open to an intellectual debate. A curious point is related to a law in 1924 (the *Marzescu Act*) that prohibited the activity of the communist party. A Western author, Stanislaw Frankowski, is not the only one who erroneously records it as the moment when capital punishment was enacted against communist agitators. The law did not include such a provision and it was probably communist historiography and propaganda that inoculated this mystification. (An example of this, through an intentionally vague statement, we can find in Poenaru, *Contributii...*, 74: “ulterior bourgeois penal laws... were more and more repressive, outlawing the communist party in 1924, repressing some crimes against public order through Marzescu law in the same year, modified in 1927 and 1933, when it became Marzescu-Mironescu law, through which were justified the excusable killings of the government during the strikes in Valea Jiului in 1929 and Grivita in 1933.”)

Another layer of the methodological discussion addresses another question, which goes beyond the discourse, and is more rooted in reality than in the ideological discussion. How was capital punishment used as a political instrument? To answer to this I will refer to the debate that defined the historiography of communism, namely the one between totalitarian/revisionist schools. In the totalitarian approach, the almighty state rules every part of the political and social life through coercion and terror. This assertion is denied by the revisionists, who emphasize how certain aspects of life were more independent, or, I would say, negotiated with the state, which is also

convergent with Foucault's theory of disciplinary mechanisms. I will show that the use of the death penalty successfully illustrates frequent irregularities and an incoherent policy of the representatives of a regime who seemed to not always be aware of its aims or the ways to achieve them, as it transformed its own perpetuation into one of its main goals especially when it was weakest, at the very beginning and close to its end. This resulted in the use of the death penalty in a manner that was dictated by immediate "needs" and reactions to specific events, rather than a coherent criminal policy, and thus was ultimately less influenced by ideology than one might expect. However, the rules of the game were established by the state through legal provisions, so I find a balanced perspective offered by the two schools the most appropriate.

2. Decree no. 318/1958, the harshening of the penal code and afterwards

In terms of the death penalty, the first half of the communist period was very dynamic in Romania. Its start was dominated by the issue of dealing with war criminals, which often took a retributive form, a disguised way of punishing the fascists, former political rivals of the communists. Inadequate data limits us from having a full account of the dimensions of this phenomenon, while a comparison with other East-European communist states confirms that the data is incomplete. In 1949, the legal provisions concerning capital punishment were extended to several economic and political crimes, intended to frighten a large part of the population. (Fijalkowski, 2001, p. 70.) The propagandistic use was centered on the publicity of the legal provisions and not on particular cases. Relying first on the specific deterrent effect of the executions, the regime used the death penalty mainly to eliminate fascists, saboteurs, traitors or members of the resistance groups, etc.. Although it could also directly eliminate them, the authorities decided to follow the legal procedures. This was meant to provide the appearance of legality that aimed to improve regime's image and it also had a general deterrent feature. (Kirchheimer, 1961, p. 288.) Although leading jurists debated and attempted to abolish capital punishment in 1956, they failed and the legal provisions and actual use did not change.

In 1957, a draft Penal Code was sent into the field and the magistrates and advocates were required to express their critiques. Regarding article 44, concerning the death penalty, the vast majority expressed their concern, firstly because of the vague definition of the crimes punishable by death, for instance

in the case of particularly serious embezzlement, asking for a precise delimitation of the serious character, and eventually setting a threshold. (Archive of the Ministry of Justice (AMJ), 1957).

Secondly, they addressed a critique of the punishment itself. From an ideological and judicial perspective (Bohm, 2008, pp. 285-291.), Adolf Reneti, a lawyer from Sfantu-Gheorghe, criticized the vague definition of the punishments in general: "The notion of punishment is confused with the scope of the punishment (reeducation). For the crimes where the punishment is death, reeducation makes no sense." (AMJ, 1957) Advocate Ioan Dumitrescu from Giurgiu is even more explicit: "We are against this measure because it is in contradiction with the Marxist-Leninist principles, which consider the criminal educable and the punishment a means of reeducation and social reinsertion." (AMJ, 1957) A. Hilsenrad did not understand why, "since this punishment exists...it has to be discretely inserted in the code as a "temporary measure". It should be at the top of the list of punishments in article 43." (AMJ, 1957) "The multiplicity of the capital crimes demonstrates that the punishment is not exceptional", advocate Dan Victor argued, "and if it is indeed temporary, it should not be a part of the Penal Code." (AMJ, 1957)

These critiques of the substantive part of the Penal Code were accompanied by procedural difficulties in interpreting the legal provisions in the act of justice. But these difficulties were unimportant as the law was a tool for the main aims of the regime to be achieved. Before the Penal Code was amended, a secret report from the Ministry of Interior heavily criticized the Ministry of Justice for the weak content of what was probably a draft of the code. The report indicated that not all punishable crimes were included, the definitions were not wide enough, and

"defending the security of our state was neglected... It ignores that in our country still exists a numerous social class generating counter-revolutionary crimes, consisting of kulaks, landlords, industrialists and big merchants, all dispossessed, legionnaires, members of the bourgeois parties, former intelligence officers, policemen and other anti-popular elements fighting against popular power, overtly or underground, but in more and more various and subtle forms." (Archive of the National Council for the Study of the Archive of "Securitate" (ANCSAS), pp. 389-390)

In the meantime, the authorities decided the adoption of the above mentioned provisions as soon as possible. A new code was not adopted until

1969, but several laws amended the old code during the following years. The use of the death penalty was extended to aggravated murder by decree no. 469 on 20 September 1957 and during this year at least one person was executed for this crime. (Archive of The National Administration of Penitentiaries (ANAP)) Article 464¹ provided that „Premeditated murder, in its aggravated form, or murder with cruelties and torture are punishable by death. Same punishment will be applied for double murder in the same time or through different actions.” (Buletinul Oficial (‘Official Bulletin’), 1957, p. 230) It is very important to mention that this was the first time aggravated murder became a capital crime after 1944. During the entire period, the authorities focused on political and economic crimes, considered to be more condemnable than murder. The same decree provided the death penalty for *particularly serious embezzlement* (art. 236, paragraph 2). It explains the particularly serious character as follows: “the application of the maximum of the punishment provided by law for the simple form of the offence would not be enough.” (Buletinul Oficial (‘Official Bulletin’), 1957, p. 229)

One year later, the Penal Code was heavily amended by decree no. 318 on 17 July 1958. The decree summarizes the provisions of several other decrees in the period 1949-1958, but also includes many political crimes which newly became punishable by death, while in most cases the death penalty was the only available punishment. The explanations accompanying the decree argue that on one side, law no. 16/1949 modified by decree no. 199/1950 and the penal code coexisted and this made the application of the law by the courts difficult. „On the other side, intensified criminal actions of the enemies of our regime impose the death penalty for other important crimes as well: uprising, rebellion and several similar crimes.” (National Archives of Romania (NAR), p. 27)

Articles 184-192 describe treason in its several forms, such as passing state secrets regarding the capacity of defense, any act against an allied state, etc.:

7. Art. 184. The Romanian citizen committing any action in order to subdue the state territory or a part of it to the sovereignty of a foreign state or to suppress or prejudice the independence of the state commits the crime of treason, which is punished by death.

Same punishment will be applied for an action intended to undermine the unity of the state.

8. Art. 185. The Romanian citizen who fights against his own country or enrolls in the army of a state who declared war to the Romanian state commits the crime of treason and is punished by death.

9. Article 186, paragraph 1. The Romanian citizen conspiring, collaborating with foreign governments or their agents or parties, associations or political groups in order to start a war against the Romanian state, to facilitate or to install the foreign occupation commits the crime of treason and is punished by death.

10. Article 187, paragraph 1.1. If the relationships of the Romanian citizen with a foreign citizen referred to one of the following acts, the punishment is death:

Involving the Romanian state into neutrality or into a war declaration. (Buletinul Oficial ('Official Bulletin'), 1958, pp. 202-203)

Article 188 included the capital crimes during wartime, while articles 190-192 described the cases of treason by public servants and other citizens.

Article 194 refers to cases of espionage, but capital punishment was applied only for foreigners committing most of the crimes described above.

Another important set of capital crimes were those including crimes against the internal security of the state. Article 207, one of the most used in relieving political opponents refers to acts of terror:

Art. 207. The acts of terror, committed individually or in group through any means, as well as spreading viruses or poisoning substances, resulting in death or severe body injuries, as well as the formation of a group of terrorists or saboteurs is punished by death and property confiscation. (Buletinul Oficial ('Official Bulletin'), 1958, p. 203)

Article 209 widely describes the cases of undermining national economy, already punished by death according to decree no. 202/1953 for the most serious cases. Most of these crimes were previously stipulated in the Penal Code, but not as capital crimes. The application for embezzlement was restrained to the cases with a prejudice of over 100.000 lei, or below this level if the actions represented a severe social threat or were committed repeatedly, according to article 236. Very important to note is that the attempt to commit most of these crimes was also punishable by death. In the case of attempting to commit or committing embezzlement, all the possessions of the executed had

to be confiscated, as a complementary punishment, having obvious consequences on the family of the condemned.

Article 210 punished uprisings by death in some cases, while articles 211 and 212 mentioned the same punishment for insurrection and military usurpation. Article 262 described rebellions against the Legislative Assembly with the punishment being death if the actions resulted in death of a person. Article 320 stipulated death for the crimes inside Romania of the members of a gang constituted outside the country, „if robbery of murder were committed or attempted.” (Buletinul Oficial (‘Official Bulletin’), 1958, p. 206)

Article 505²⁰ provided that in cases where a capital sentence should be applied, the sentencing could be delayed only once and for 3 days maximum. The appeal had to be declared within 24 hours and finalized within 3 days, while a clemency petition had to be sent within 24 hours after the final sentence.

Article 184 summarized the content of the decree through a very comprehensive paragraph: “The same punishment will be applied for any other crimes determined to undermine the state unity.” (Buletinul Oficial (‘Official Bulletin’), 1958, p. 202) All the provisions of decree no. 318 could be applied retroactively (art. III).

Afterwards, decree no. 1 on 3 January 1959 made the attempt to commit an act of terror, uprising, military insurrection and usurpation, capital crimes as well. Article 209 provided capital punishment for the most serious cases of conspiracy against the social order:

(...) initiating or forming, inside or outside the country, organizations or associations with the purpose of changing the social order or the democratic government in our state, or activating in such an organization or association, or adhering to it. When the acts are particularly serious, the punishment is death. (Buletinul Oficial (‘Official Bulletin’), 1959, p. 2)

For all the crimes, if mitigating circumstances could be determined, the death penalty could be transformed into forced labor for lifetime or another punishment, unlike decree no. 318, where this provision could only be applied for crimes against public property.

What could determine this attitude and such a tightening of the penal policy? The events in the USSR following the death of Stalin and condemnation of his policies, added to the uprising in Hungary (ANCSAS, p. 390) in 1956 and the withdrawal of the Soviet troops from Romania in 1958

(The events had a similar effect in the GDR; Evans, 845, 867.) were perceived as a threat by the unreformed Stalinist-type leader Gheorghe Gheorghiu-Dej and this led to a continuous repression throughout the period. On the other side, some authors identified two waves of repression, between 1949-1953 and 1958-1960, another version being that the death of Stalin and the goal of joining the United Nations determined a gap between 1953 and 1958. (Budeanca, 2010) Subsequently, following a loyal attitude during the uprising in Hungary in 1956, soviet troops were withdrawn in 1958 and in the same time, the Romanian authorities wanted to prove to Moscow that this does not imply a relaxation of the penal policies. Thus, from the Securitate report regarding the penal code, that was mentioned earlier, we can learn that:

The events in Hungary and the late tensions in international relations confirmed once again that this social anti-popular base – helped by the imperialist reaction – is pursuing a various class struggle up to armed actions, hoping that it will overthrow the popular power and reinstall the capitalist order.” (Budeanca, 2010, p. 20)

The results were as expected. In 1958 and 1959 the use of the death penalty reached its climax: 32 executions in 1958 and 55 in 1959, recorded by the penal registration forms (See Table 1). 28 people were put to death for embezzlement only, while 24 for acts of terror. The execution of 16 murderers, followed by another 8 executions for the same crime in 1960 reveals the incoherent policy of the regime regarding this crime, since all the executions for murder for the next 5 years (1961-1965) only reached 8 cases. (ANAP) The campaign is doubled by a wide clemency policy who’s impact on the overall judicial process are yet to be studied (Heise, 2003, p. 252.); no less than 21 sentences were commuted in 1958, 46 in 1959 and another 28 in 1960, while in 1961 only one person was pardoned, the numbers hence returning to normal levels (See Table 2). (NAR, decrees no. 9, 82, 192, 258, 365, 442/1959 and 67, 162, 341/1960.)

Table 1 (author’s calculations)

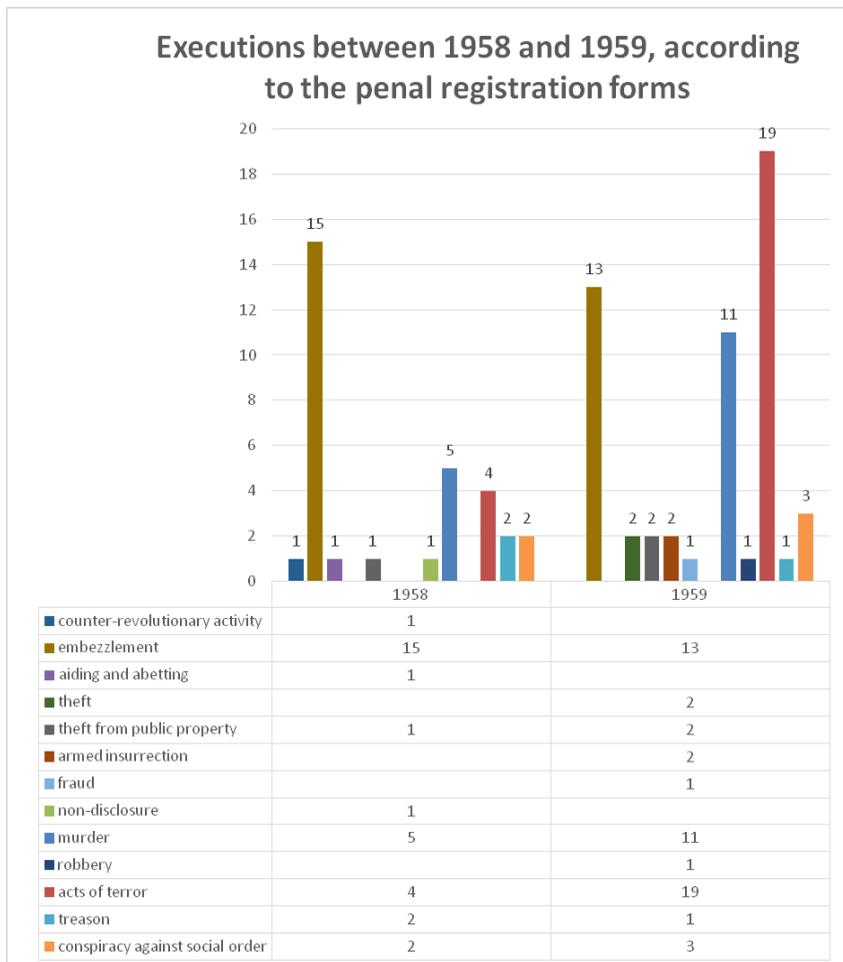
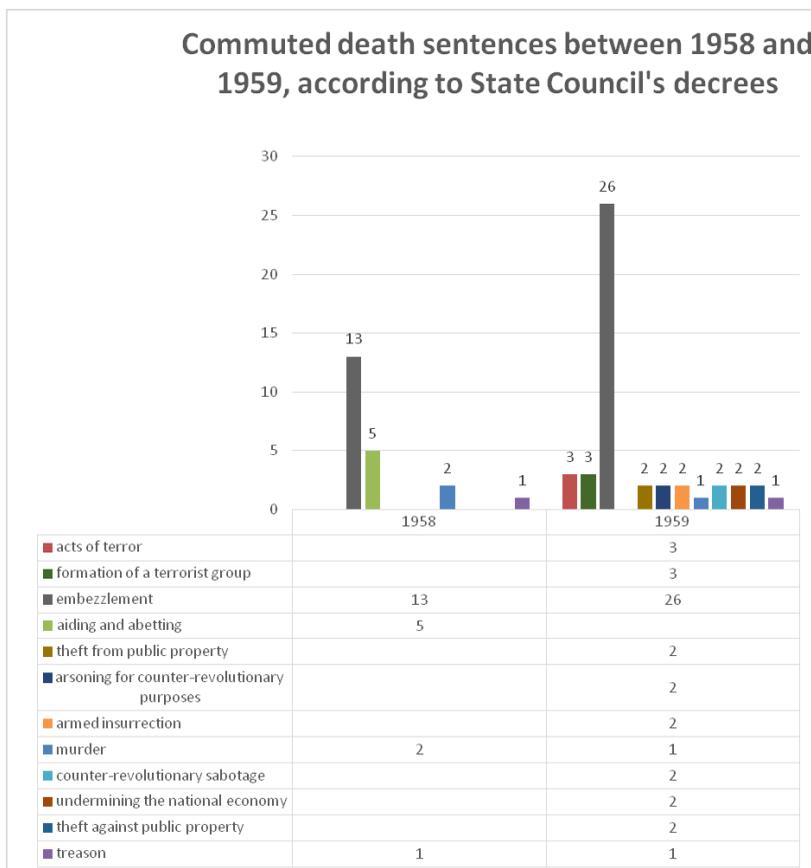


Table 2 (author's calculations)



Some cases easily show how the law was politicized, not only through the legal provisions. Popescu Lorin, 19 years old, was rejected during the admission process at the university because of his social origin and wrote two poems against the regime and the USSR in 1957. Subsequently, he organized a *terrorist organization* with another youngster, Bibul Dumitru, 20 years old, and committed a few robberies and a murder to get supplies and guns for a refuge into the mountains. This is the official version of the authorities and the chances to find out whether it is also true are small. What we know for sure is that they were caught on April 21, 1958, and their clemency petitions were

rejected by the Presidium of the Great National Assembly on September 22, 1958. (NAR, decree no. 399/1958, 6.)

Gavrilescu Traian posed another kind of threat to the regime, after his escape from a work colony where he was sentenced for 18 years for theft against public property. He committed a new series of thefts, one of them described in a document that rejected his clemency petition:

On May 5, 1958, he went to the State Bank in Resita, where he saw, at a table, three people counting the money for the salaries of the workers of a factory, put his suitcase on the suitcase with the money and stole 30000 lei. Then he left for Baia Mare, where, because of the parties he gave, he was caught by the militia. (NAR, 5-6)

Inconsistently, against the arguments behind the tightening of the penal policies, during the same year, decree no. 315 on 19 August provided the possibility of some pardons due to the fact that „during the last 15 years since our country has been liberated, the popular democracy regime consolidated, achieving new and great successes in its construction of socialism.” (*Buletinul Oficial* (‘Official Bulletin’), 1959, p. 1) Those condemned for crimes against the state, including economic crimes and those condemned for murder were exempted.

The fight against fascism was a constant for the communist regime in Romania. After the trials following the war, the legionaries were again on the spot. In 1958-1959 some of them were re-arrested and imaginary complots were tried. Ten people were arrested and sentenced to death by sentences no. 62 and no. 83 of the Military Tribunal of Bucharest in 1959. All of them were members of the former Iron Guard and most of them had been imprisoned prior to these trials and served sentences in Romanian prisons or labor camps. The accusations did not consist of war crimes or any other crimes related to the war period as it might be expected. An official report was not kept, but its results from their clemency petitions (NAR, 1959, pp. 1-42.) that they were accused of planning an armed insurrection against the social order. For this, they were alleged to have gathered armament and set up a terrorist organization, trying to reorganize the Legionary movement. According to Cristofor Dancu, a member of the clergy and one of the ten, the accusations were false, and they were actually arrested for the mechanism that they developed, for helping other legionnaires, consisting of raising funds for those in need. Some of them also had plans to flee the country fearing the persecutions; all these activities happened in the late 1940's.

Roman Uriciuc, the first arrested, describes in his petition how the legal proceedings evolved and fake evidence was inserted into the files, and how forced declarations were taken under severe torture. It all started from some ammunition found in his house by the Securitate. He was tortured and asked to declare that they planned the reorganizing of the Legionary movement for the occupation of state institutions in case of upheaval. "I was told that if I don't declare this I will be shot, hanged on the fence, and a prison break will be staged." (NAR, 1959, p. 36.) Apparently none of the 10 was executed. They were released in 1962-1964, when most of the political detainees were freed. (NAR, decree no. 411/1964) But the attitude of the top authorities is synthesized by Gheorghiu-Dej's annotations on the clemency petition of Constantin Atanasiu: "Although guilty... (Dej: If you are guilty, then?); I have never been condemned before (Dej: So what? Maybe you wanted to be condemned a few times before being sentenced to death?)." (NAR, p. 1)

For the memorializing function of the clemency petitions see Austin Sarat, "Memorializing miscarriages of Justice: Clemency petitions in the Killing State", *Law and Society Review*, 42, 1, March 2008, 183-224.)

Another member of the above mentioned group was the poet Radu Gyr, who mentions in his clemency petition: "I was a naïve poet for all my life and I ask you from all my heart to commute my sentence. A poet asks clemency, a poor and naïve poet, old and ill, and not a terrorist or a political adventurer." (NAR, p. 42.) But the naïve poet was one of the most prominent poets of the Iron Guard and, although accused of armed insurrection, the real reason for his death sentence was his poems. (Gyr's) He was imprisoned for his poetry two times before. On 2 June 1945 he was among the 13 accused in the trial of journalists.

Sometimes the condemned were kept in prisons and used as informers in similar trials, in what seems to be a blackmail action. Although this could not be documented in the Romanian case, Radio Free Europe reported these kinds of events in Poland in 1952, the name used for these condemned being *little fish (rybka)*. (Condemned to Death Penalty Used as Witnesses', 5 March 1952. HU OSA 300-1-2-16515; Records of Radio Free Europe/Radio Liberty Research Institute) The successive sentences of the group above, as well as the details offered by the condemned in their clemency petitions entitle us to believe that we deal with such a case.

The death penalty was the only possible punishment for the leaders of the partisan anticommunist groups like those in the Banat mountains, five of them (Spiru Blănaru, Petre Domoșneanu, Ion Tănase, Petre Pușchiță și Romulus Marinescu) were sentenced to death and executed on July 16, 1949 and another seven executed later without a sentence. (Tismaneanu, 2007, p. 213) The leaders of the Capota-Dejeu group, after distributing some leaflets were sentenced for the crimes of non-disclosure and acts of terror. (ANAP) During a trial organized in Cluj on July 8, 1958 the two received their death sentences, and were executed on September 2, 1958. (Budeancă, 2006, p. 30) Garda Alba group was invented by the Hunedoara Securitate according to some authors „their only guilt was that they had a hostile attitude towards the regime (manifested verbally most of the time), that they opposed to the collectivization of the agriculture, or that they have been sentenced for political crimes before.” (Budeanca, 2010, p. 78.) On January 16, 1959 three of its members were executed: Ioan Nistor, Miron Roman and Gheorghe Voina. (ANAP) In the case of the much better organized group in the Fagaras mountains, brothers Toma and Petre Arnautoiu were executed alongside 14 other condemned ((Titu Jubleanu, Constantin Popescu, Ioan Săndoiu, Nicolae Andreescu, Ion Constantinescu, Nicolae Ticu, Nicolae Bășoiu, Gheorghe Tomeci, Alexandru Moldoveanu, Ion Drăgoi, Ion Mica, Gheorghe Popescu, Nicolae Nițu și Benone Milea) on July 18, 1959, while colonel Gheorghe Arsenescu was captured only in 1960 and executed in 1962. (ANAP) Regarding the first group, Richard Wurmbrand, also a Jilava inmate at that time, claimed that the executions were not carried by a platoon: „The executioner was a gipsy guy named Nita that received 500 lei for each execution. He was the most obedient amongst the guards: his nickname was The Black Angel from Jilava.” (Dobrincu, 2008, p. 165)

The wrath of the regime went beyond the Romanian borders, as one particular case in 1959 illustrates. The actual events took place in 1955, when an armed group seized the Romanian embassy in Berne, Switzerland with the declared intention to attract attention to the abuses of the Romanian communist regime, and also to unmask its espionage activities. The hostage situation ended within a few days, with the imprisonment of the attackers in Switzerland. Considering it a staged event by the émigré members of the former Iron Guard, Western intelligence agents and the Swiss government, the Romanian authorities took their revenge in 1957, when Oliviu Beldeanu, the released leader of the group, was abducted in West Berlin by Stasi and

Securitate agents. (Olaru, 2003) After being brought to Romania, Beldeanu was sentenced to death for treason on 31 October 1959, and executed on 2 February 1960. (ANAP) A similar kidnapping took place in Vienna in 1958, when Traian Puiu, the former legionnaire mayor of Constanta and a member of the Horia Sima group in exile was sent to Bucharest. Sentenced to death for treason, incitement to treason and conspiracy against the social order on September 5, 1960 (NAR, decree no. 321/1963, p. 1), he benefited from a reprieve on June 19, 1963 and was liberated one year later through decree no. 411/1964. (NAR, decree no. 411/1964)

The commutation of the capital sentence of another member belonging the same group, Pamfil Seicaru, took place in a different context. Being sentenced to death in 1945 with the famous group of journalists, he was accused for country's disaster and war crimes through his editorial activity. Although in 1966 internal legislation included a statute of limitations for his deeds, this was against international laws and the Romanian authorities had to surpass this problem. They managed to do so since collaboration of Seicaru with the regime was very good, as we can read in a motivation of the Ministry of Interior: „Pamfil Seicaru, as an immigrant, has a proper attitude and performs an useful activity abroad for our country.” (NAR, decree no. 977/1966, p. 4)

Yet another case, illustrated by a documentary film (Solomon, 2004), put the authorities in an even more unusual position in 1959. Five men and a woman, Alexandru and Paul Ioanid, Haralambie Obedeanu, Sasa Musat, Igor and Monica Sevianu, all Jews and members of the nomenclatura, allegedly robbed a bank vehicle, stealing an enormous amount of money in a country where they could not spend it. The accusation was not a simple robbery, but plotting against state order. (ANAP) In his documentary, the director Alexandru Solomon advanced several hypotheses: that it was a defying act of a group of top party members unsatisfied by the turn the regime took, or that they were victims of the anti-Semitic purges that the Party operated in those years, etc. When corroborated by witnesses all these hypotheses appear potentially plausible. After their capture, the alleged robbers were asked to play in a propaganda movie about their own deeds, called *Reconstruction*. (Solomon, 2008, pp. 57-79.) The final part of the movie was not a reconstruction though, but the real trial in which the five men were sentenced to death and executed. *Reconstruction* was shown in private screenings at the time, but only for a specific audience formed by party members; no doubt it

was a delicate propaganda case. Accepting to appear in the movie was probably a desperate attempt to save their own lives, a unique case in the history of capital punishment, possibly as sinister as the contemporary Chinese TV shows made with prisoners before their executions. But this was not their only attempt, according to Solomon's movie. Gheorghe Enoiu, the investigator of this case claims that Paul Ioanid, the former Romanian representative in the USSR space program, asked him in a private meeting to be sent to outer space. (Solomon)

Only in 1960, for the first time, through article 24 of the Decree no. 212 on 17 June, the death penalty was mentioned as a punishment - not in the general list of punishments, but in a separate article:

As an exceptional measure for the most serious crimes directed against social and state order in the People's Republic of Romania, or against its rule of law, the death penalty is provided in certain cases and conditions provided by the law.

The death penalty will not be applied upon a perpetrator that was not 18 at the time the crime was committed, neither upon a pregnant woman or the mother of a child younger than 3.

Likewise, the death penalty cannot be executed if the perpetrator is a pregnant woman or the mother of a child younger than 3.

In the cases provided in the paragraphs 2 and 3, the death penalty will be replaced by the maximum forced labor on a limited period." (Buletinul Oficial ('Official Bulletin'), 1960, p. 47)

All the crimes against the state were still to be trialed by the military tribunals, a measure provided by the law 16/1949 that was also confirmed in 1956 by article 16 of the decree no. 90. (NAR, decree no. 90/1956, p. 144)

Genocide is mentioned among capital crimes and other war crimes are more clearly defined, probably following the agreements reached in Geneva in 1955 in the cold-war context. The provisions regarding embezzlement were abolished by decree 212/1960 until 1969, while the sentences of those awaiting their executions for this crime were commuted to 25 years of forced labor (art. III).

Regarding the way the executions took place, the executions regulation in 1958 (ANCSAS, pp. 269-281.) introduced a few changes compared to the one in place since 1942. (Buletinul Oficial ('Official Bulletin'), 1942, pp. 3414-3416.) Some of these changes were most probably

in use immediately after the war. The clemency petition had to be formulated within 24 and not 48 hours after the appeal was rejected. In the 1942 regulation, seeing a priest and relatives, the possibility of writing a will and a glass of alcohol were allowed to the condemned, but in 1958 these provisions were all denied. Only certain legal representatives and a medical examiner were allowed to be present for the supervision of the execution. In both cases the execution was carried out by a firing squad and the condemned had to be blindfolded. The new regulation established that if a pregnant woman was sentenced to death, she will not be executed immediately after the birth of the child, but after 9 more months. However, no cases of executions of women are recorded, although examples of capital sentences exist: in May 1948 Cosma Aurelia's death sentence for high treason from March 1944 was commuted; (NAR, file no. 518/1948, p. 9.) Popovici Lucia's sentence for premeditated murder with cruelties was commuted in 1959, same as the one of Hornoiu Maria in 1960, while Spanu Sabina from Prigoria also received a commutation to 20 years forced labor for her capital sentence for murder in 1965. (NAR, decree no. 35/1967, p. 1)

Decree no. 215/1960 modified article 16 of the *Regulations Regarding the Execution of the Death Sentences* and provided that if a pregnant woman or the mother of a child less than 3 years old is sentenced to death, this sentence will be commuted to forced labor for a limited period. (NAR, decree no. 215/1960, p. 1) Useless to mention that fundamental rights were denied, such as keeping the contact with the family, mentioned in a UN document, „Standard Minimum Rules for the Treatment of Prisoners.” (Hodgkinson, 2013, p. 136.) More serious aspects such as failing to inform the condemned about the execution date were deliberately ignored by the authorities, as in a case reported by colonel Doicaru. The families were most probably not notified about the execution date, while most of the times the death was communicated at a later date.

The peak of executions in 1958-1959 began decreasing in 1960, when 17 executions, 8 of them for murder and 5 for plotting against state order were recorded. In the years until the penological reform in 1969, the number of executions decreased, with only one execution for rebellion in 1962, one for acts of terror during the same year, one for robbery and murder in 1967 and 11 for murder recorded during the whole period (See Table 3). The penal registration forms provide information about 8 execution cases between 1965 and 1968 (ANAP), and a statistical situation from the Ministry of Justice

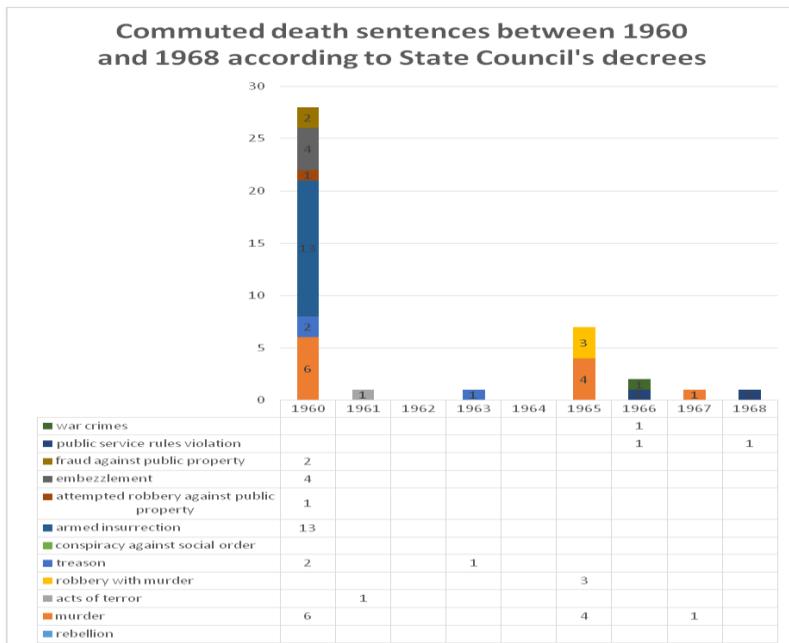
mentions 11 condemnation cases. (AMJ, p. 2) Although this seems to be a credible proportion between executions and condemnations, and the data confirm each other, they have to be considered relative.

The commutations during this period are returned to normal figures after 1960, except the year when Ceausescu took the power, in 1965, when 7 sentences are commuted, all of them for murder or robbery and murder (See Table 4). This was a normal practice for a leader newly installed. (NAR)

Table 3 (author's calculations)



Table 4 (author's calculations)



In 1962-1964 the era of direct repression ended with the release of most political prisoners. According to the decrees (Between 1962 and 1964 several decrees were issued in this respect, some of them including thousands of names, as 310/ 16 June 1964 and 411/24 July 1964.) issued in this respect, more than 70 detainees whose death sentences were commuted during the years were also released. (A volume of documents including these decrees edited by Dorin Dobrinu and Andrei Muraru is in print.) A new policy regarding the death penalty, more subtle, was about to begin after this.

Two cases in 1966 and 1968 show the connection between the impact of the events on public opinion and the influence of the latter on the sentence itself. The two railway accidents involved Alexandru Ciinaru (NAR, decree no. 774/1966, pp. 1-17), a switchman, for the accident on May 31, 1966 and Petrisor Teodor (NAR, decree no. 1167/1968, p. 1), a signalman, for an accident in 1968, both considered guilty by negligence. Regarding Ciinaru, the minister of justice mentioned that „he comes from a family of peasants in a cooperative, actively participating in agriculture” (NAR, decree no. 774/1966, p. 9), while general attorney said that „the defendant had an insincere attitude

during the investigation” (NAR, decree no. 774/1966, p. 10), but considering the „particularly serious danger posed by his actions”, both reject the commutation, while the minister of interior was the only one who agreed. (NAR, decree no. 774/1966, p. 5)

Petrisor Teodor was sentenced after a show trial held in Teius train station in front of a large audience, which was meant to add an instructive feature to the trial. Both sentences were eventually commuted by the State Council.

In conclusion, the initial focus on war criminals/political enemies during the late 1940’s and early 1950’s, in an atmosphere dominated by seizure of power, corresponds to the *Terror stage* delimited by Andrew Scobell in his study (Scobell, 1991), while a second stage, assuming *Routinization or codification of the repression* was enacted through several decrees amending the Penal Code and the establishment of a new judicial system throughout the 1950’s. The zenith of its reflection in the death penalty field were the years 1958-1959, when the highest rates of executions of the whole period of 1944-1990 were registered. As Scobell noticed, the leadership change usually determined a policy change regarding the death penalty, accompanied by a revision of the Penal Code, marking a *Readjustment*. Gheorghe Gheorghiu-Dej, the Stalinist ruler of Romania died in 1965, when Nicolae Ceausescu became the new Secretary General of the Romanian Communist Party. This revision of the legal frame also took place in Romania, where a new Penal Code was adopted in 1969, increasing the accuracy of the legal provisions. However, in the Romanian case, the *Readjustment* coincides neither with a period of economic liberalization, nor with an increase of the economic capital crimes, as Scobell argues, which in Romania took place much earlier, between 1958 and 1959, so it can rather be associated to this period.

Acknowledgment

This paper is supported by the Sectorial Operational Programme Human Resources Development (SOP HRD), financed from the European Social Fund and by the Romanian Government under the contract number SOP HRD/159/1.5/S/136077.

3. References

- AMJ, (1957) unprocessed fond, file *Observații și Propuneri la Codul Penal, Vol. II*, (Observations and Proposals for the Penal Code, Vol. II).
- AMJ, Fond *Secretariatul General* (General Secretariate), file no. 75, vol. 6
- ANAP, Fond *Fișe Matricole Penale* (Penal Registration Forms)
- ANCSAS, Fond *Documentar* (Documentary), file no. 10172/19
- ANCSAS, Fond *Documentar* (Documentary), file no. 13209, vol. 3
- Angelescu, C. (1927) *Pedeapsa cu Moarte la Români în Veacul al XIX-lea* (The Death Penalty in 19th Century Romania), București: Tipografia Închisorii Centrale “Văcărești”.
- Archive of The National Administration of Penitentiaries (ANAP), Fond *Fișe Matricole Penale* (Penal Registration Forms), published online by The Institute for The Investigation of Communist Crimes and the Memory of the Romanian Exile.; http://crimelecomunismului.ro/en/penal_registration_forms/.
- Archive of the Ministry of Justice (AMJ), (1957) unprocessed fond, file *Observații și Propuneri la Codul Penal, Vol. II*, Observations and Proposals for the Penal Code, Vol. II.
- Archive of the National Council for the Study of the Archive of “Securitate” (ANCSAS), Fond *Documentar* (Documentary), file no. 10172/1
- Bohm, R. (2008) Karl Marx and the Death Penalty, *Critical Criminology*, vol. 16, no. 4.
- Boulanger, C. & Sarat, A. (2005) *The Cultural Lives of Capital Punishment: Comparative Perspectives*, (Stanford: Stanford University Press).
- Budeancă, C. (2006) *Represiunea politică în România comunistă. Grupul Capotă-Dejeu* (‘Political Repression in Communist Romania. Capota-Dejeu Group’), Cluj Napoca: Argonaut
- Budeanca, C. (2010) *Represiunea politică în România comunistă. "Garda Albă" - organizație subversivă inventată de Securitatea hunedoareană* (‘Political Repression in Communist Romania. “Garda Alba” – a Subversive Organization Invented by the Hunedoara Securitate Service’), Cluj Napoca: Argonaut
- *Buletinul Oficial* (‘Official Bulletin’), 17 June 1960
- *Buletinul Oficial* (‘Official Bulletin’), 19 August 1959
- *Buletinul Oficial* (‘Official Bulletin’), 21 July 1958
- *Buletinul Oficial* (‘Official Bulletin’), 25 Aprilie 1942
- *Buletinul Oficial* (‘Official Bulletin’), 3 January 1959
- *Buletinul Oficial* (‘Official Bulletin’), 30 September 1957
- Dobrinu, D. (2008) The Anti-Communist Armed Resistance on the Southern Slope of the Făgăraș Mountains and the Iezer Mountains. The Groups Led by

Colonel Gheorghe Arsenescu and Lieutenant Toma Arnăuțoiu (1948-1960) (III), *Revista Arhivelor. Archives Review*, 2.

- Evans, R. (1996) *Rituals of Retribution: Capital Punishment in Germany, 1600-1987*, Oxford: Oxford University Press.
- Fijalkowski, A. (2001) The Abolition of the Death Penalty in Central and Eastern Europe, *Tilburg Foreign Law Review*, 9 (2001)
- Filiti, C. (1882) *Despre Împușcarea Osândiților si Arestaților Fugari* (About the Shooting of the Detainees and Fugitive Prisoners), București: Noua Tipografie Națională.
- Foucault, M. (2000) 'Against Replacement Penalties', in *Essential Works of Foucault. 1954-1984, Volume 3: Power*, Rabinow Peter (ed.), New York: The New York Press.
- Frankowski, S. (1996) Post Communist Europe, in *Capital Punishment. Global Issues and Prospects*, Peter Hodgkinson and Andrew Rutherford (editors), Winchester: Waterside Press.
- Garland, D.; McGowen, R. & Meranze M.(eds.) (2011), *America's Death Penalty, between Past and Present*, New York: NYU Press, 2011.
- Heise, M. (2003) 'Mercy by the numbers: An Empirical Analysis of Clemency and its Structure', *Virginia Law Review*.
- Hodgkinson, P. (2013) The Greater Stigma? Family Visits to the Condemned, in *Capital Punishment. New Perspectives*, Peter Hodgkinson (ed.), Farnham: Ashgate.
- Hood, R. (2002) *The Death Penalty: a Worldwide Perspective*, New York: Oxford University Press.
- Kirchheimer, O. (1961) *Political Justice: The Use of Legal Procedure for Political Ends*, Princeton: Princeton University Press.
- NAR, Fond *Comitetul Central al PCR - Sectia Administrativ-Politica* (Central Committee of the RCP - The Political-Administrative Section), file no. 17/1959
- NAR, Fond *Consiliul de Stat - Decrete*, (State Council - Decrees).
- NAR, Fond *Ministerul Justiției – Directia Judiciara*, (Ministry of Justice - Judiciary Unit), file no. 518/1948
- National Archives of Romania (NAR), Fond *Consiliul de Stat - Decrete* ('State Council – Decrees'), decree no. 318/1958
- Olaru, S. (2003) *Cei Cinci Care au Speriat Estul* (The Five Who Frightened the East), Iasi: Polirom.
- Pella, V. (1923) *Pedeapsa cu Moarte in Legatura cu Proiectul Constitutiei* (The Death Penalty Related to the Project of the New Constitution'), Bucuresti: Tipografia Curierul Judiciar.

- Poenaru, I. (1974) *Contribuții la Studiul Pedepsei Capitale* (Contributions to the Study of Capital Punishment), București: Editura Academiei RS România, 1974.
- Records of Radio Free Europe/Radio Liberty Research Institute, (1952) 'Condemned to Death Penalty Used as Witnesses', 5 March 1952. HU OSA 300-1-2-16515, General Records: Information Items; Open Society Archives at Central European University, Budapest.
- Sarat, (2008) "Memorializing miscarriages of Justice: Clemency petitions in the Killing State", *Law and Society Review*, 42, 1, March 2008.
- Sarkisova O. & Apor P. (eds.) *Past for the Eyes: East European Representations of Communism in Cinema and Museums after 1989*, Budapest: Central European University Press.
- Scobell, A. (1991) The Death Penalty under Socialism, 1917-1990: China, the Soviet Union, Cuba and the German Democratic Republic, *Criminal Justice History: An International Annual*, 12.
- Solomon, A. (2004) *Marele Jaf Comunist* ('Great Communist Bank Robbery'), produced by BBC et. al., France-Romania-Germany-UK
- Solomon, A. (2008) The Experiences of a Filmmaker. Reconstructing Reality from Documents in Communist Archives',
- Tismaneanu, V. et al., (2007) *Comisia Prezidentiala pentru Analiza Dictaturii Comuniste din Romania. Raport Final* (The Presidential Commission for the Analysis of the Communist Dictatorship in Romania. Final Report), Bucuresti: Humanitas.